

Remarks

This Amendment is in response to the Office Action mailed January 11, 2002. Claims 18, 20-24 and 26-32 are pending in this application. Prompt and favorable reconsideration is respectfully requested.

Claim 26 has been objected to because the Examiner had indicated that the word "allowing" should be --allows--. Applicant has amended Claim 26 accordingly.

Claims 23, 24, 27, 28 and 32 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite as the Examiner states that *"it is unclear how the scent receiving element can be 'extending from' the end of the lure, which is defining a perimeter, and at the same time 'conform' to that perimeter."* For the following reasons, Applicant respectfully disagrees.

As can be seen in Figures 11A and 11B, the "perimeter" referred to at the end of the body portion is essentially that of the circumference or contour of the body portion at that end. As further can be seen in Figures 11A and 11B, the scent receiving element extends from the end of the lure, and at the same time conforms to that perimeter, i.e., has the same circumference or contour where they meet, and thus cooperate to define a continuous and smooth surface of the overall lure (as claimed in Claim 32). Accordingly, in view of Applicant's disclosure, i.e., Figures 11A

and 11B and the description thereof on page 14 of the specification, Applicant respectfully states that Claim 23 and its dependent claims are not indefinite because it is clear what is meant by the scent receiving element "extending from" the end of the lure, which is defining a perimeter, and at the same time "conforms" to that perimeter. Figures 11A and 11B clearly illustrate the same.

Nonetheless, in an effort to clarify any indefiniteness the Examiner still may believe exists, Applicant herein has amended Claim 23 to replace the term "perimeter" with the term "contour." While this is a matter of semantics, Applicant believes such an amendment may clarify any indefiniteness the Examiner still may believe exists. However, such an amendment is being made for the sole purpose of rebutting the Examiner's 112 rejection, and it is respectfully asserted that such an amendment does not change the scope of the claim, as defined by Figures 11A and 11B and their description in Applicant's specification. Therefore, this minor amendment set forth solely for clarification purposes, does not constitute new matter nor raise any new issues which would require further consideration.

With respect to Claim 28, the Examiner states that *"it is unclear how the scent receiving element is 'obstructed.'"* However, Claim 28 claims that the scent receiving element is unobstructed.

Accordingly, it appears the Examiner's 112 rejection of Claim 28 is inapplicable. Applicant respectfully requests removal of the same.

Claims 18, 20, 21, 26 and 28-31 have been rejected under 35 U.S.C. §102(e) as being anticipated by Mooers. For the following reasons, the Examiner's rejection is respectfully traversed.

Mooers does not anticipate, or even makes obvious, Applicant's claimed lure, as required under the law pertaining to 35 U.S.C. §102. As previously stated,

[A]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, **arranged as in the claim**. ... The issue is decided by identifying the elements of the claims, **determining their meaning in light of the specification** and prosecution history, and identifying corresponding elements disclosed in the allegedly anticipating reference....(citations omitted) Idacon Inc. v. Central Forest Products Inc., 3 USPQ2d 1079, 1089 (E.D. Ok 1986).

Claims 18, 20, 21, 26 and 28-31 relate to the embodiment illustrated in Figure 6 of Applicant's disclosure. Independent Claim 18 is directed to a spoon type fishing lure, with a scent receiving element in the spoonlike body portion, and further requires that the plane of the scent receiving element is coplanar with the plane of the body portion. In this manner, the surface of the lure is continuous and smooth and does not interfere with the motion of the lure (Claims 30 and 31). The scent receiving element is directly accessible from both sides of the lure (Claim 20). The scent receiving element is sized and shaped to conform to the size

and shape of the cavity (Claim 29) and is held thereto by means for securing (Claim 21) which allow for repeated attachment/removal without the need to alter the lure (Claim 26), and wherein the scent receiving element remains unobstructed (Claim 28).

Mooers does not anticipate or make obvious any of these claimed features of Applicant's invention. Mooers is not a spoon lure, as is commonly known in the art of fishing. In fishing, a spoon lure is generally known to be a single, curved body with a hook at the end. Mooers is a two piece lure wherein the two pieces are set perpendicular to each other. While the horizontal body portion 44 has a profile or outline of a "spoon" shape, it does not equate to what is traditionally known in the art of fishing as a spoon. Even if it could be considered a spoonlike body, it does not even receive the scent receiving element. Mooers places its scent bladder in a housing in the vertically disposed fin-like body portion 46 which is not spoonlike. *(Claim 28) Spoon-like*

Further, Mooers' scent bladder, while having flat end walls defining planes which may be parallel to the plane of the body portion 46 (if placed precisely in housing 38), in no way defines a plane which is coplanar with the body. Coplanar means the same plane. Parallel planes are not coplanar, they are different planes. Similarly, as can be seen in Figure 4 of Mooers, because Mooers' bladder is approximately four times the width of the fin

portion 46, it cannot be said to be sized and shaped to conform to the size and shape of the cavity. Also for this reason, Mooers' scent bladder does not cooperate with the body to define a smooth and continuous surface, and as such, Mooers' scent bladder would interfere with the motion of the lure.

Still further, unlike Applicant's scent receiving element, Mooers' scent bladder is not directly accessible from both (or either) side. Instead, it is only indirectly "accessible" through the housing 38 (apparently opening from one side only), which essentially precludes applying scent to the scent bladder until the scent bladder is removed from the housing 38. Similarly, Mooers' bladder is inside the housing 38 and is thus not unobstructed. It is obstructed by the housing 38.

Additionally, Applicant's means for securing attaches the scent receiving element to the body portion, unlike Mooers in which the bladder is not attached to the fin portion 46, but instead is enclosed in housing which in turn is attached to the fin portion 46. Also, Applicant's scent receiving element is attached and removed without the need to alter the lure. Mooers' lure must be altered to place or remove the scent bladder in the housing, i.e., flap 54 must be manipulated.

Accordingly, for the above stated reasons, Mooers fails to anticipate Applicant's Claims 18, 20, 21, 26 and 28-31.

Reconsideration and removal of this rejection is respectfully requested, as is an early notice of allowance.

Claims 18, 20, 21, 26 and 28-31 have been further rejected under 35 U.S.C. §102(e) as being anticipated by Monticello et al. For the following reasons, the Examiner's rejection is respectfully traversed.

Monticello et al. does not anticipate, or even makes obvious, Applicant's claimed lure, as required under the law pertaining to 35 U.S.C. §102. Again,

[A]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, **arranged as in the claim**. ... The issue is decided by identifying the elements of the claims, **determining their meaning in light of the specification** and prosecution history, and identifying corresponding elements disclosed in the allegedly anticipating reference....(citations omitted) Idacon Inc. v. Central Forest Products Inc., 3 USPQ2d 1079, 1089 (ED Ok 1986).

Claims 18, 20, 21, 26 and 28-31 relate to the embodiment illustrated in Figure 6 of Applicant's disclosure. Independent Claim 18 is directed to a spoon type fishing lure, with a scent receiving element in the spoonlike body portion, and further requires that the plane of the scent receiving element is coplanar with the plane of the body portion. In this manner, the surface of the lure is continuous and smooth and does not interfere with the motion of the lure (Claims 30 and 31). The scent receiving element is directly accessible from both sides of the lure (Claim 20). The

scent receiving element is sized and shaped to conform to the size and shape of the cavity (Claim 29) and is held therein by means for securing (Claim 21) which allow for repeated attachment/removal without the need to alter the lure (Claim 26), and wherein the scent receiving element remains unobstructed (Claim 28).

Monticello et al. does not anticipate or make obvious any of these claimed features of Applicant's invention. While Monticello et al. is a "spoon" lure, it admittedly is a "unique" spoon that is substantially different from what is commonly known in the art of fishing as a spoon. In fishing, a spoon lure is generally known to be a single, flat, curved, rigid metal body with a hook at the end. Monticello et al. is a two piece lure including a pliable core encased within a soft rubber body, presenting a thick oval or semi-circular configuration, as shown in Figures 3, 6, and 7D. This does not equate to what is traditionally known in the art of fishing as a spoon.

Further, Monticello et al.'s scent receiving element is wholly embedded inside the body of the lure and does not extend to either the top or bottom surface. As such, it cannot be said that the scent receiving is coplanar with the body. Because Monticello et al.'s lure is not flat, it does not define a single plane as does Applicant's. Instead it defines two separate planes on its top and bottom surface. Nonetheless, Monticello et al.'s scent receiving

element is not coplanar with either of the planes defined by its surface, and simply cannot anticipate Applicant's claims as defined by its specification. Also for this reason, Monticello et al.'s scent receiving element does not cooperate with the body to define a smooth and continuous surface. Again, the scent receiving element does not extend to either surface and thus cannot cooperate to define a smooth and continuous surface, as defined by Applicant's claims.

Still further, unlike Applicant's scent receiving element, Monticello et al.'s scent receiving element is not directly accessible from both (or either) side. Instead, it is only indirectly "accessible" through the coating 8, which essentially precludes applying scent to the scent bladder without an injection implement. Similarly, Monticello et al.'s scent receiving element is inside the lure and is thus not unobstructed. It is obstructed by the surrounding core 10 and coating 8.

Additionally, Applicant's means for securing attaches the scent receiving element to the body portion, unlike Monticello et al. in which the scent receiving element apparently simply rests in its port, without being attached to the body portion. In fact, it would not need to be attached or secured because it is completely enclosed therein. Also, Applicant's scent receiving element is attached and removed without the need to alter the lure.

Monticello et al.'s lure must be altered (disassembled or torn apart) to place or remove the scent receiving element inside of the lure.

Accordingly, for the above stated reasons, Monticello et al. fails to anticipate Applicant's Claims 18, 20, 21, 26 and 28-31. Reconsideration and removal of this rejection is respectfully requested, as is an early notice of allowance.

Claims 23, 24, 27 and 32 have been rejected under 35 U.S.C. §102(b) as being clearly anticipated by Walker. For the following reasons, the Examiner's rejection is respectfully traversed.

Walker does not anticipate, or even makes obvious, Applicant's claimed lure, as required under the law pertaining to 35 U.S.C. §102. Again,

[A]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, **arranged as in the claim**. ... The issue is decided by identifying the elements of the claims, **determining their meaning in light of the specification** and prosecution history, and identifying corresponding elements disclosed in the allegedly anticipating reference....(citations omitted) Idacon Inc. v. Central Forest Products Inc., 3 USPQ2d 1079, 1089 (ED Ok 1986).

Claims 23, 24, 27 and 32 relate to the embodiment illustrated in Figures 11A and 11B of Applicant's disclosure. Independent Claim 23 is directed to a lure, wherein a scent receiving element in attached to and extends from the end of the lure in such a manner that the scent receiving element conforms to the contour

(perimeter) of the lure. Thus, the lure body and the scent receiving element cooperate to define a continuous and smooth surface (Claim 32), and as such the scent receiving element does not interfere with the motion of the lure (Claim 24). Claim 27 specifically requires the lure to be a jig (as shown in Figures 11A and 11B).

Walker does not anticipate or make obvious any of these claimed features of Applicant's invention. Walker places scent receiving material in the sides of a lure, not at the end. Further, the scent receiving material does not extend from any part of the lure. Clearly, as arranged in the claim and defined by the specification, Walker does not even come close to anticipating Applicant's claims. (See Idacon Inc., *supra*). Sides are not ends. In fact, Walker defines its forward end at 12, and thus its back end at 14, and further defines the scent receiving material as being on the sides of the lure, not the end. Walker unquestionable does not disclose a scent receiving element on the end of the lure.

As such, Walker does not disclose conforming a scent receiving element to the end contour or perimeter of the lure (as in Claim 23), which does not interfere with the motion of the lure (as in Claim 24), and which cooperates with the body portion to define a continuous and smooth surface (as in Claim 32). Further, as is commonly known in the art of fishing, Walker is clearly not a jig

(as in Claim 27).

Accordingly, for the above stated reasons, Walker unquestionably fails to anticipate Applicant's Claims 23, 24, 27 and 32. Reconsideration and removal of this rejection is respectfully requested, as is an early notice of allowance.

Claim 22 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Mooers. For the above stated reasons with respect to Mooers, the Examiner's rejection is respectfully traversed.

Accordingly, Applicant respectfully asserts that the claims as amended herein are now in condition for immediate allowance. An early Notice of Allowance is respectfully requested.

Version with markings to show changes made

Please amend the application as follows:

In the Claims:

Please amend the claims as follows:

18. (Unchanged) A fishing lure, comprising:

a spoonlike body portion;

at least one cavity formed in said body portion; and

a scent receiving element located in said at least one cavity, wherein said body portion defines a plane and said scent receiving element defines a plane, and said scent receiving element being embedded in said body portion such that said plane of said scent receiving element is coplanar with said plane of said body portion.

20. (Unchanged) The fishing lure of Claim 18, wherein said body portion defines two sides, and said scent receiving element being directly accessible from both sides.

21. (Unchanged) The fishing lure of Claim 18, further comprising means for securing said scent receiving element in said at least one cavity.

22. (Unchanged) The fishing lure of Claim 18, wherein said at least one cavity is a plurality of cavities, each receiving a scent receiving element.

23. (Amended) A fishing lure comprising:

a body portion having an end, said end defining a contour

[perimeter]; and

a scent receiving element attached to and extending from said end of said body portion, said scent receiving element adapted to conform to the contour [perimeter] of said end of said body portion.

24. (Unchanged) The fishing lure of Claim 23, wherein said scent receiving element does not interfere with the motion of said lure.

26. (Amended) The fishing lure of Claim 21, wherein said means for securing allows [allowing] for repeated, selected attachment and removal of said scent receiving element to and from said body portion without the need to alter said lure.

27. (Unchanged) The fishing lure of Claim 23, wherein said fishing lure is a jig.

28. (Unchanged) The fishing lure of Claim 18, wherein said scent receiving element is unobstructed.

29. (Unchanged) The fishing lure of Claim 18, wherein said scent receiving element is sized and shaped to conform to a size and shape of said at least one cavity.

30. (Unchanged) The fishing lure of Claim 18, wherein said scent receiving element does not interfere with the motion of said lure.

31. (Unchanged) The fishing lure of Claim 18, wherein said

body portion and said scent receiving element cooperate to define a continuous and smooth surface.

32. (Unchanged) The fishing lure of Claim 23, wherein said body portion and said scent receiving element cooperate to define a continuous and smooth surface.

Conclusion

As described above, neither Mooers, Monticello et al. or Walker, nor the prior art of record, either alone or in combination, fairly teach, suggest or disclose the novel and unobvious features of Applicant's invention as presently claimed. Accordingly, Applicant respectfully asserts that the claims as presented herein are now in condition for allowance. An early notice allowance is requested.

Any arguments of the Examiner not specifically addressed should not be deemed admitted, conceded, waived, or acquiesced by Applicant. Any additional or outstanding matters the Examiner may have are respectfully requested to be disposed of by telephoning the undersigned.

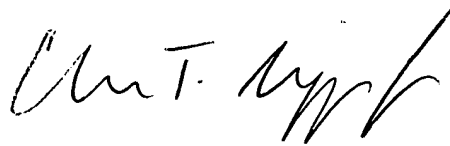
A Petition for an extension of time to make this Amendment timely is enclosed herewith and respectfully requested.

Further, a Notice of Appeal is also enclosed herewith.

A form PTO-2038 is enclosed in payment of the Extension fee and the Notice of Appeal fee. The Commissioner is hereby authorized to charge any additional or deficient fees which may be required to Deposit Account 16-0657.

A postcard is enclosed evidencing receipt of the same.

Respectfully submitted,
PATULA & ASSOCIATES, P.C.

A handwritten signature in cursive script, appearing to read "Charles T. Riggs Jr.", written in dark ink.

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